



**State of New Hampshire**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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WEARE TEACHERS ASSOCIATION - NEA-NEW  
HAMPSHIRE  
  
Complainant  
  
v.  
  
WEARE SCHOOL BOARD  
  
Respondent  
\*\*\*\*\*

CASE NO. T-0278:2  
  
DECISION NO. 87-38

APPEARANCES

Representing the Weare Teachers Association- NEA-New Hampshire:

Mary E. Gaul, UniServ Director

Representing the Weare School Board:

Douglas Hatfield, Esq.

Also Appearing:

Ann C. Colburn, Weare Teachers Association, NEA-New Hampshire  
Dorothy Towle, Weare Teachers Association, NEA-New Hampshire  
Margaret Ann Moran, Esq., Weare School Board  
Fred Roberts, Weare School District  
Ted Comstock, Director of Labor Relations, NH School Board Association

BACKGROUND

The Weare Teachers Association ("Association") filed a petition to modify their bargaining unit to include the nurse and the guidance counselor. The Association claimed that conditions within the district have changed and also that the nurse and guidance counselor are professionals sharing a "community of interest" with the Association.

The Weare School Board ("Board") responded that the Association had attempted to bargain the inclusion of the nurse and guidance counselor during the history of negotiations between the two parties without agreement. A new agreement was negotiated since this filing and still excludes both the nurse and guidance counselor.

The Board further argued that the nurse does not share a community of interest with the teachers since the nurse, inter alia:

- (a) is not certified nor has a degree
- (b) is not a teacher
- (c) does not perform work of teacher outside of classroom
- (d) has different working hours
- (e) has different individual contract
- (f) is paid on different formula than instructional staff

The Board argued that the guidance counselor does not share a community of interest with the teachers since, inter alia:

- (a) not required to perform same duties as instructional staff
- (b) not involved in classroom instruction
- (c) has different working year and different working hours
- (d) has different pay schedule
- (e) that the school board may wish to assign supervisory duties to the job of counselor

A hearing was held on the modification petition at the PELRB's offices in Concord, N.H. on April 9, 1987 with all parties represented.

#### FINDINGS OF FACT

- 1). The current school nurse testified that she had a nursing diploma and was a licensed, registered nurse in the State of New Hampshire. (see Association #1)
- 2). The current school nurse testified that her job description made her responsible to "develop, maintain and administer the school health program" (see Association #2) and that both her job description and the school's health program involved her in an instructional role and in the educational program in the following ways:
  - (a) the nurse trains volunteers for the (elementary) lice screening tests and orders and disseminates materials to parents.
  - (b) the nurse also takes part in the following regular, recurring programs: dental program; holiday safety program; nutrition teaching and drug awareness (in class); adolescent sexuality.
- 3). The nurse's in-class participation and instructional activities are planned by the nurse, to assure regular program activities over the course of the semester.
- 4). The nurse's classroom activity will vary from day-to-day in scheduling and is always conducted with the regular classroom teacher in the room.
- 5). The nurse attends some, but not all, faculty meetings.

- 6). In the "Drug and Alcohol Unit", the nurse attends various drug & alcohol programs and decides which are suitable for the school program and makes appropriate modifications to ensure continuity from one grade to another.
- 7). In the "Nutrition Unit", the nurse personally presents the material to the students (over three days) for grades one through six; students can also arrange with the nurse to work individually (or in groups) on a diet to lose or gain weight, with parental knowledge and cooperation.
- 8). In the "Smoking and Health Unit", the nurse is a resource for the classroom teacher; providing materials, health information, etc.
- 9). In the "Adolescent Unit" (5th and 6th grade) the classroom teacher instructs the girls and the nurse instructs the boys on sexuality, peer pressure, self-esteem, etc.
- 10). In the School Safety Program, the nurse instructs students (up to grade four) on bus safety, waiting for busses, etc.
- 11). The nurse is currently researching information dealing with teen suicide and teen pregnancy.
- 12). The school nurse does not determine the budgets for these various "health" programs but works directly with school officials (principal) making recommendations, requests, etc.
- 13). The nurse is part of the "care team" to discuss individual students' problems along with teachers, guidance counselors, special ed. teachers, etc. concentrating on any physical or medical problems that exist.
- 14). The school nurse spends approximately five (5) hours per week (of 35) or approximately 15% of the time actually in the classroom; her (85%) time outside of the classroom is largely spent providing "professional health care" and counseling with respect to whatever health needs are imminent.
- 15). The principal testified that few, if any, changes in the nurse position responsibilities have occurred in last five (5) years or so except that the nurse has become a salaried person in recognition of her professional status.
- 16). The principal testified that his evaluation of the nurse was as a primarily "health care" person and not the same as teachers.
- 17). The principal testified that the nurse had no regular daily classroom assignment; no student supervision duties; no home preparation, no planbook, is not required to attend faculty meetings or have parent-teacher conferences and not generally required to serve on committees or attend meetings after school.
- 18). The principal testified that the school did not have a "health program" per se but rather separate "units" in science, health, physical education, etc. The school is planning for a comprehensive health program now but the nurse is not included in this planning.

- 19). The principal testified that the nurse's average day differed markedly from that of the teachers.
- 20). The principal testified that the school librarian(s) was in many ways different in their work than teachers but did participate with faculty in meetings and sometimes on committees and that the librarian was engaged in primarily education related work and nothing else.

\*Association's request for findings:

Granted: #1, 2, 3, 4, 5 (with limitations and specifications, see decision findings) 6, 7, 8.

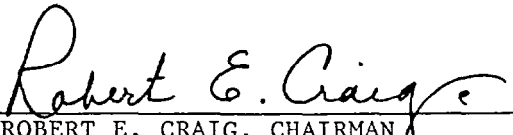
#9 is denied in part, granted in part (see decision)

RULINGS OF LAW

- A. The school nurse is clearly a health professional by reason of training, competence, level of responsibility and actual job description and performance.
- B. The question which must be answered here is whether the nurse is also an "educational professional". We recognize the nurse's fine interest in the students and her performance in regard to the education of the students, and we think she is a health-education professional for the following reasons: (see also Decision #85-69)
  - (1). The nurse is engaged in significant classroom activity and is always working with and sometimes under the supervision of the class teacher;
  - (2). Approximately 15% of the nurse's duties are directly spent in classroom activity;
  - (3). The nurse performs as a significant resource to the educational process, helping teachers, planning curricula and guiding health-related programs.
- C. Not enough testimony and evidence were submitted to show a change in the situation regarding the guidance counselor's position to require any modification for this position. See PELRB Rule 302.05(a)

DECISION AND ORDER:

- (1). The PELRB finds that the nurse does share a sufficient community of interest with the educational professionals to require inclusion in the bargaining unit and the request to so modify is hereby granted.
- (2). The request to modify the existing bargaining unit is denied with respect to the guidance counselor.

  
ROBERT E. CRAIG, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 6<sup>th</sup> day of July, 1987.

Chairman Robert E. Craig presiding. Members Richard E. Molan, Seymour Osman and Richard W. Roulx present and voting. Also present, Evelyn C. LeBrun, Executive Director.